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**MISCELLANY.**

THE TORRENS SYSTEM.—The following is a copy of the bill to be introduced at the coming session of the General Assembly. All members of the bar are requested to read the same and to send their criticism to the REGISTER for publication:

**Torrens Bill.**

*A BILL to provide for the settlement, registration, transfer, and assurance of titles to land, and to establish the court of land registration, with jurisdiction throughout the Commonwealth.*

Whereas, section one hundred of the Constitution of Virginia provides that the General Assembly shall have power to establish such court or courts of land registration as it may deem proper for the administration of any law it may adopt for the purpose of the settlement, registration, transfer or assurance of titles to land in the State, or any part thereof; and

Whereas, it is now desired to enact a law for said purpose and deemed proper to establish a court of land registration for the administration thereof—

1. *Definitions.*—Be it enacted by the General Assembly of Virginia, That this act may be cited as the act of land registration, and, when used herein, the words “voluntary transaction” shall be construed to embrace and mean all devices, all contractual, or other acts or dealings, by any registered owner of any estate or interest in land with reference to such estate or interest, and any statutory right or exemption claimed therein; the words “involuntary transaction” shall be construed to embrace and mean transmission of registered land, or any interest therein by descent, the rights curtesy and dower, any and all equitable rights and claims, and judicial proceedings or statutory liens or charges, the exercise of the right of eminemene domain, and the lien of delinquent taxes and levies, affecting registered land, or any interest therein; the phrase “writing, instrument, or record,” shall be construed to embrace all transactions, whether voluntary or involuntary, as herein defined; the words “proper assistant recorder” shall be construed to mean the assistant recorder of the county or corporation in which the land lies; the word “decree” shall be construed to embrace and mean judgment, order, or decree; the word “appeal” shall be construed to embrace and mean writ of error, supersedeas, or appeal; and except where the context require a different construction the word “court” shall mean the court of land registration.

2. *Court of land registration.*—A court of record is hereby established, to be called the court of land registration, which shall be held by a judge, who shall be chosen by the joint vote of the two houses of the General Assembly for a term of eight years, and possess the same qualifications as judges of the supreme court of appeals.

3. *Jurisdiction of the court.*—Said court shall have exclusive, original, and general jurisdiction throughout the Commonwealth of all petitions and proceedings for the registration of title to land, subject to the right of appeal hereinafter allowed, and shall have all the powers possessed by the circuit courts of the Commonwealth, in law and in chancery, for the purpose of enforcing any of the provisions of this act. It shall always be open, except on Sundays and public holidays, and its process may be issued at any time, returnable as it may direct. The whole matter of law and fact in any case may be heard, either orally or in writing, by the court and be determined, and decree may be rendered accordingly; but, on the motion of any person interested, the court shall direct an issue or issues to be tried by jury in the circuit court of the county, or proper city court of the city, in which the land, or the greater part thereof, lies, and shall adopt the verdict of the jury when duly certified to it; but such circuit or city court shall have the same power over such verdict as in ordinary jury trials. The proceedings under any petition for the registration of land, and all proceedings in the court in relation to registered land, shall be proceedings *in rem* against the land, and the decrees of the court shall operate directly on the land, and vest and establish title thereto in accordance with the provisions of this act. And the court may, from time to time, make general rules and forms for procedure, subject to the provisions of this act and the general laws; but such rules and forms shall be approved by the supreme court of appeals before taking effect.

4. *Appeals.*—An appeal may be taken within ninety days, and not afterwards, from any decree of the court, under the same circumstances, in the same manner and on the same conditions as if such decree had been rendered by a circuit court, except that the evidence shall always be considered by the appellate court as if on an appeal in chancery.

5. *Court to be held in Richmond and elsewhere when necessary.*—The court shall be held in the city of Richmond, but may be held from time to time at such other places in the State as the public convenience may require. A suitable court room and offices in the city of Richmond for the judge and the recorder of the court shall be provided and furnished, under order of the governor, and cared for by the superintendent of public buildings; and all necessary books and such printed blanks and stationery for the use of the recorder and of the court as may be ordered by the court shall be furnished by the superintendent of public printing. All such expenses of the court shall be paid for in the same manner as like expenses of the supreme court of appeals. But it shall be the duty of the supervisors of each county and the council of each city in which the office of an assistant recorder may be located to provide appropriate cases and other furniture for the safe and convenient keeping of all the books, documents and papers in the custody of such assistant recorder, and also an official seal, and all necessary books and such printed blanks and stationery for use in registration in such county or corporation as may be ordered by the court. When necessary to adjourn to any county or other corporation, the court

may be held in the court-house thereof whenever the same is not in the use of the circuit or corporation judge for court purposes.

6. *Court may be held by circuit or city judge.*—If in any case the judge of the court have any personal interest in the property involved, or be connected by blood or marriage with any one so interested, or be so situated as, in his opinion, to make it improper for him to try it, on his own motion, or the motion of any one interested, the case may be heard and determined and decree be rendered by any circuit or city judge who may be designated by the governor to try the same.

7. *Recorder to be appointed by the court.*—The court shall appoint a recorder, who shall be its clerk for a term of eight years, subject to removal by the court at any time. He shall do all things required of him by this act, under the direction of the court, and shall perform similar duties and be governed by the same general laws as clerks of circuit courts in so far as the same may be applicable. His office shall be known as the land registration office.

8. *Assistant recorders.*—The county clerk and his deputies in each county, and the clerk of any corporation or city court in which deeds may be admitted to record, and his deputies, shall be assistant recorders with authority and duty, under the direction of the court, to issue process and to enter the decrees of the court touching lands in their respective counties or corporations, to enter and issue certificates of title as provided herein, to affix the seal of the court to such certificates and their duplicates, and to make entries and memoranda and perform all acts of registration affecting the title to such lands, and generally to perform such other acts and duties as the court may prescribe. They shall keep a separate account of all taxes, fines, and other public moneys with which they may be chargeable under this act, and shall make a special return thereof in accordance with the general laws and the special provisions of this act. Their official designation under this act shall be assistant recorder for their respective counties or corporations, and they shall qualify and give bond in accordance with law for the faithful performance of their duties as such.

9. *Examiners of titles.*—The court shall appoint, subject to removal at any time, two or more attorneys at law in each county or corporation to be examiners of titles, whose duty it shall be to search the records and investigate all facts stated in the petition or otherwise brought to their notice in any case referred to them. They shall have the powers of commissioners in chancery, and may hear the parties and their evidence, either orally or in writing, and shall make report thereof to the court in the form required by it, with a certificate of their examination of the title and opinion thereon.

10. *Salary of judge and recorder.*—The judge of the court shall receive a salary of four thousand dollars, which, together with mileage for all necessary travel in the discharge of his judicial functions shall be paid to him out of the State treasury in the same manner as the salary and mileage of the judges of the supreme court of appeals. The recorder of the court shall

receive an annual salary of five hundred dollars, to be paid to him in the same manner as that of the clerks of the supreme court of appeals.

11. *Petition for registration.*—Suit for registration of title shall be begun by a petition to the court by the person or persons claiming, singly or collectively, to own, or to have the power of appointing or disposing of an estate in fee simple in any land, whether subject to liens or not. Infants and other persons under disability may sue by guardian, committee, or trustee, as the case may be, and corporations by an officer duly authorized by a vote of the directors. But the person in whose behalf the petition is made shall always be named as petitioner.

12. *Matter and form of petition.*—The petition shall be signed and sworn to by each petitioner, shall contain a full description of the land, and any improvements thereon, and give the description and valuation in its last assessment for taxation; shall show when, how, and from whom it was acquired, and whether or not it is occupied; and shall give an account of all known liens, interests, and claims, adverse or otherwise, vested or contingent. Full names and addresses, if known, of all persons that may be interested by marriage or otherwise, including adjoining owners and occupants, shall be given.

13. *Petition to be filed, docketed, and indexed; also to be recorded as notice of lis pendens.*—The petition shall be filed with the proper assistant recorder, and shall be forthwith docketed and indexed by him in a book to be known as the land registration docket of his county or corporation. And such assistant recorder, as clerk of his county or corporation, shall also forthwith record and index in the proper deed-book of such county or corporation a memorandum, which shall be filed with the petition, such as is required by the Code for notice of *lis pendens*, and which shall have the full force and effect of such notice. Said petition, together with any exhibits filed therewith, and a certificate showing the record of the memorandum thereof as aforesaid, shall then be forwarded to the recorder, and shall be docketed and indexed by him in a book to be known as the general land registration docket, in his office. A memorandum of all other pleadings and papers filed with said assistant recorder shall be entered upon his docket as aforesaid, and such pleadings and papers shall then be forwarded to the recorder, who shall likewise enter a memorandum of them upon his docket. And upon the entry of a final decree in the cause all the papers therein shall be returned to the proper assistant recorder and be safely kept by him in his office. Whenever any petition affects land lying partly in one county or corporation and partly in another, it shall be filed in each county or corporation, and all the requirements of this act shall be observed by each assistant recorder; but the cause shall be regarded and heard as a single suit, and the recorder shall finally return the papers to the assistant recorder of the county or corporation in which the greater part of the land lies.

14. *Order of publication in rem.*—Upon the filing of a petition for the registration of any land the court shall cause notice thereof to all persons

named in the petition, and "to all whom it may concern," to be published, and to be posted in the county or corporation where the land, or the greater part thereof lies, in the same manner and with the same effect as an order of publication in other proceedings *in rem*, subject, however, to the limitations imposed by this act upon the right of any and all persons to have the case reheard or to take an appeal from the final decree of the court.

15. *Notice by registered mail and posting on the land.*—If the petition involves the determination of any public rights or interests, the court shall cause a copy of the order of publication to be sent by the recorder by registered mail to the proper attorney for the Commonwealth, and such copies shall be likewise mailed to every person named in the petition whose address is given or known. The court shall also cause an attested copy of said order to be posted in a conspicuous place by the proper sheriff on each parcel of land included in the petition, and may cause other or further notice to be given in such manner and to such persons as it may deem proper. Notice given under this and the preceding section shall be in lieu of personal service of process, and shall be conclusive and binding on all the world; provided, however, that such personal service of process as is required in chancery proceedings shall also be made upon residents of the State, not under disability, who are made known to the court before final decree and can be reached by its process, unless such service be waived by appearance or otherwise.

16. *Certificates of recorder, assistant recorder and sheriff conclusive proof of service; cause set for hearing and guardian ad litem appointed.*—Certificates from the recorder, assistant recorder and sheriff, or their deputies, showing the due execution of said order of publication and the mailing and posting of copies thereof as required by the two preceding sections, shall be filed among the papers in the case and be conclusive proof of such service. And thereupon, after the expiration of at least fifteen days from the execution of said order of publication as aforesaid, the cause shall be set down for hearing, and the court shall appoint some discreet and competent attorney at law of the county or corporation in which the land, or the greater part thereof lies, as guardian *ad litem* for all persons under disability, not in being, unascertained, unknown, or out of the Commonwealth, who may have an interest in or claim against the land.

17. *Answers to petition at any time before final decree.*—Any person having any interest in or claim against the land, whether named in the petition and order of publication or not, may appear and file an answer at any time before final decree. Such answer shall be personally signed and sworn to, unless the court, for good cause shown, otherwise direct.

18. *Cause referred to examiner of titles.*—After the appointment of the guardian *ad litem* the court shall refer the cause to one of the examiners of titles of the county or corporation in which the land, or the greater part thereof, lies, who shall with due expedition make a report thereon to the court. Said report shall lie for ten days in the office of the assistant recorder for said county or corporation for exceptions, and may then be con-

sidered by the court with reference to the rights of all persons appearing to have any interest in or claim against the land.

19. *Court may have land surveyed, set durable bounds and enter all necessary decrees.*—While the cause is pending before the examiner of titles, or at any time before final decree, the court may require the land to be surveyed by the surveyor of the county or corporation in which it, or the greater part of it, lies; may order durable bounds to be set and a plat thereof to be filed among the papers of the suit, and may enter all necessary decrees for the establishment, declaration and protection of the right and title of all persons appearing to have any interest in or claim against the land.

20. *Petition may be withdrawn or dismissed.*—Any petition may be withdrawn by the petitioner or his privies at any time before final decree upon such terms as may be fixed by the court. And if in any case the court is of opinion that the petitioner's title is not and cannot be made proper for registration, the petition may be dismissed without prejudice.

21. *Amendments to petition and other pleadings.*—Amendments to petitions or other pleadings, including joinder, substitution, or discontinuance of parties, and the omission of any portion or parcel of the land, may be ordered or allowed by the court at any time before final decree upon terms that may be just and reasonable, and the court may require facts to be stated in the petition in addition to those prescribed by this act.

22. *Land may be dealt with, pending registration, subject to decree of the court.*—The land described in any petition may be dealt with before registration as if no such petition had been filed; but any instrument admitted to record under the general laws in relation to such land pending action on said petition shall also be docketed and indexed as required by section thirteen of this act; and any person who shall acquire any interest in or claim against any such land shall at once appear as a petitioner, or answer as a party defendant, in the proceedings for registration, and such interest or claim shall be subject to the decree of the court.

23. *Decree of registration is final, quiets title and binds all the world, subject to appeal.*—If the court, after final hearing, is of opinion that the petitioner has title proper for registration, a decree of confirmation and registration shall be entered upon proof by certificate from the proper officer or officers that all taxes and levies assessed on said lands and then due or delinquent have been paid in full. Every decree of registration shall bind the land and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, including the Commonwealth, whether mentioned by name in the order of publication or included under the general description "to all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding at law or in equity for reversing judgments or decrees, except as herein especially provided.

24. *Form of decree and manner of registration; the original certificate of title and transfer certificates.*—Every decree of registration shall be made in convenient form for transcription upon the certificate of title hereinafter mentioned, giving the name and residence of the owner, and, except in the case of a corporation, stating whether married or unmarried, and the name of the consort, if any; and if the owner is under disability, it shall state the nature thereof, and if an infant, shall state his age. It shall give a description of the land as finally determined by the court and set forth the estate of the owner therein, and also describe in such manner as to show their relative priorities all particular estates, easements, liens, or other encumbrances or rights to which the land or the owner's estate is subject; and may contain any other matter determined in pursuance of the provisions of this act. Such decree shall take effect upon the land described therein as of the day, hour and minute it is filed for registration in the office of the proper assistant recorder, who shall forthwith make a memorandum thereof and record and index the same in the proper deed-book in his office, and likewise mark the land "registered" upon the latest land-book in his office as clerk of the court of record for said county or corporation; and said memorandum shall also be entered and indexed by the assistant recorder on his land registration docket and in the entry book hereinafter directed to be kept by him. And thereupon said decree, or so much thereof as may be ordered by the court, shall be copied, signed and sealed with the seal of the court by said assistant recorder in the book hereinafter directed to be kept by him, to be known as the register of titles, for his county or corporation; and when so copied, signed and sealed shall constitute the original certificate of title. Subsequent certificates relating to the same land shall be in like form, but shall be designated "transfer certificate No. — (the number of the next previous certificate relating to the same land), original certificate registered (date, volume and page of registration)."

25. *The entry book to be kept by assistant recorders.*—Each assistant recorder shall keep an entry book in which he shall enter, in the order of their reception, a memorandum of any writing, instrument, or record filed with him for registration, and shall note in such book the year, month, day, hour and minute of such filing. Every such writing, instrument, or record shall be numbered and endorsed with reference to the entry thereof and securely kept in the office of the assistant recorder; and every such entry shall be numbered and indexed and shall refer to the certificate of title hereinafter mentioned, upon which, as well as upon its duplicate or duplicates, a memorandum of such entry shall be made.

26. *The register of titles to be kept by assistant recorders.*—Each assistant recorder shall also keep a register of titles book, in which he shall register and index, under the direction of the court, the original certificate of title and all subsequent certificates of title, and all voluntary or involuntary transactions authorized to be registered under this act, noting thereon, and also upon the duplicate certificate thereof, when originally



issued or subsequently presented, the minute date of registration in each case in conformity with the date shown by the entry book.

27. *The certificate of title and owner's duplicate; beneficiary's duplicate and lessee's duplicate.*—Every certificate of title entered in the register of titles as aforesaid, together with the memorials thereon, if any, shall be known as "the certificate of title," and an exact copy thereof shall be made, except that it shall be conspicuously stamped or marked "owner's duplicate," or "beneficiary's duplicate," or "lessee's duplicate," as the case may be, which shall be delivered to the owner, beneficiary, or lessee, or his attorney.

28. *Certificates of title to be numbered, and memorials thereon to be signed and sealed.*—All the certificates of title to land in each county or corporation shall be numbered consecutively, and a separate folium, with appropriate spaces for subsequent memorials, shall be devoted to each title in the register of titles for each county or corporation. Every memorial made upon any certificate of title or duplicate certificate under any provision of this act shall be signed by the assistant recorder and sealed with the seal of the court and minutely dated in conformity with the date shown by the entry book.

29. *Registration of transfers of the whole of any registered estate.*—Whenever the whole of any registered estate is transferred, the transaction shall be duly noted and registered in accordance with the provisions of this act; and thereupon the certificate of title and any duplicate certificate relating to such estate may be cancelled by the assistant recorder of each county or corporation in which the land, or any part thereof, lies, if desired by the registered owner, and a new certificate or certificates of title may be entered in the register of titles for any such county or corporation, and a duplicate or duplicates thereof issued, as the case may require.

30. *Registration of partial transfers, encumbrances, or leases.*—But if only a portion of such estate is transferred, or in the case of an encumbrance or lease, the transaction shall be duly noted and registered as aforesaid, and, without cancelling the outstanding certificate of title and duplicates, a new certificate of title may be entered in the register of titles and a new owner's duplicate certificate may be issued for such portion of the estate, or a beneficiary's duplicate or lessee's duplicate may be issued, as the case may require.

31. *Memorials to be noted.*—All registered encumbrances, rights, or adverse claims affecting the estate represented thereby shall continue to be noted upon every outstanding certificate of title and duplicate certificate until the same shall have been released or discharged.

32. *Registration of voluntary transactions.*—In voluntary transactions the duplicate certificate of title must be presented along with the writing or instrument filed for registration; and thereupon, and not otherwise, the assistant recorder shall be authorized to register the transaction, under the direction of the court, upon proof of payment of all delinquent taxes and levies, if any.

33. *Registration of involuntary transactions.*—In involuntary transactions a certificate from the proper State, county, city, or court officer, or certified copy of the order, decree, or judgment of any court of competent jurisdiction, or satisfactory evidence of compliance with the statute in relation to such transaction when filed in the office of the proper assistant recorder, shall be authority for him to register the transaction under the direction of the court.

34. *Production of duplicate certificate required.*—Whenever a duplicate certificate is not presented to the assistant recorder along with any writing, instrument, or record filed for registration under this act, he shall forthwith send notice by registered mail to the owner of such duplicate requesting him forthwith to produce the same, in order that a memorial of the transaction may be made thereon; and such production may be required by suitable process of the court, if necessary.

35. *Petitions concerning registered land and caveats and decrees thereon; how notices may be served.*—Any registered owner of any estate or interest in land, or any person having any claim against registered land arising since the same was registered, may petition the court for relief in any matter within its jurisdiction; and it shall be the duty of the proper assistant recorder, upon the request of any such person, to register a memorial that such petition has been or will be filed, which memorial shall serve as a caveat and be notice to all persons. And whenever any assistant recorder is in doubt as to the proper registration to be made in any case, the question may be likewise submitted by petition. After notice to the parties interested the court shall hear the cause and, with due regard to the provisions of this act, shall enter such decree as justice and equity may require, which shall be registered and take effect in like manner as the original decree for registration. Notices in lieu of process under this act or otherwise in relation to registered land may be served upon any person by registered mail, and the post-office registry return receipt shall be conclusive evidence of such service, and shall be binding, whether such person resides within or without the Commonwealth; but the court may in any case order different or further service by publication once a week for four successive weeks in some convenient newspaper or otherwise, which shall be likewise binding.

36. *Effect of registration of voluntary and involuntary transactions.*—Every voluntary or involuntary transaction which, if recorded, filed, or entered in any clerk's office would affect unregistered land, shall, if duly registered in the office of the proper assistant recorder, and not otherwise, be notice to all persons from the time of such registration, and operate in accordance with law and the provisions of this act upon any registered land in the county or corporation of such assistant recorder to which it relates.

37. *Registration of trusts, conditions, limitations and other equitable interests and estates.*—Whenever a writing, instrument, or record is filed

for the purpose of transferring registered land in trust, or upon any equitable condition or limitation expressed therein, or for the purpose of creating or declaring a trust or other equitable interest in such land without transfer, the particulars of the trust, condition, limitation, or other equitable interest shall not be entered on the certificates, but it shall be sufficient to enter in the entry book and upon the certificates a memorial thereof by the terms "in trust," or "upon condition," or other apt words, and to refer by number to the writing, instrument, or record authorizing or creating the same. And if express power is given to sell, encumber, or deal with the land in any manner, such power shall be noted upon the certificates by the terms "with power to sell," or "with power to encumber," or by other apt words.

38. *Registration of the transfer of equitable interests.*—No writing nor instrument for the purpose of transferring, encumbering, or otherwise dealing with equitable interests in registered land shall be registered unless the power thereto enabling has been expressly conferred by, or has been reserved in, the writing or instrument creating such equitable interest, or has been declared to exist by the decree of some court of competent jurisdiction, which decree must also be registered.

39. *Registration of estates of decedents in name of personal representatives.*—Lands and any estate or interest therein registered under this act shall, upon the death of the owner, testate or intestate, go to his personal representative in like manner as personal estate, and shall be subject to the same rules of administration as personalty, except as otherwise provided in this act, and except that nothing herein contained shall alter or affect the course of ultimate descent under the statute of descents and distributions and the rights of dower and curtesy, nor shall alter or affect the order in which real and personal assets respectively are now applicable in and towards the payment of funeral and testamentary expenses, debts or legacies, or the liability of real estate to be charged with the payment of debts and legacies.

40. *Powers of personal representatives.*—Subject to the powers, rights and duties of administration, the personal representatives of such deceased owner shall hold such real estate as trustees for the persons by law beneficially entitled thereto, but shall be entitled to no commissions thereon except in cases of necessary sales in due course of administration. And the heirs at law or beneficiaries aforesaid shall have the same power of requiring a transfer of such estate as if it were personal estate.

41. *Registration of delinquent taxes and levies; duties of collectors of taxes.*—It shall be the duty of the treasurer or other collector of taxes or levies of each county and corporation, not later than the first day of July in each year, to file an exact memorandum of the delinquency, if any, of any registered land for the non-payment of the taxes or levies thereon, including the penalty therefor, in the office of the proper assistant recorder for registration. And if any such officer fail to perform said duty, he and

his surities shall be liable for the payment of said taxes and levies, with the penalty and interest thereon.

42. *Registration of sales for delinquent taxes or levies; duties of officer making such sale; duplicate certificate to be cancelled and new duplicate issued purchaser, subject to right of redemption.*—Whenever any sales of registered land is made for delinquent taxes or levies it shall be the duty of the treasurer or other officer making such sale forthwith to file a memorandum thereof for registration in the office of the proper assistant recorder. And thereupon the registered owner shall be required to produce his duplicate certificate for cancellation, and a new duplicate certificate shall be issued in favor of the purchaser, and the land shall be transferred on the land books to the name of such purchaser, unless such delinquent charges and all penalties and interest thereon be paid in full within ninety days after the date of such sale. But a memorial shall be entered upon the certificate of title, and also upon any such new duplicate certificate, reserving the privilege of redemption in accordance with law.

43. *Registration of redemption, or final sale and new certificate of title to purchaser, if no redemption.*—In case of any redemption under the preceding section, a memorial of the fact shall be duly registered; and if a duplicate certificate has been issued to any purchaser the same shall be cancelled and a new duplicate shall be issued to the person who has redeemed. But if there be no redemption under said section in accordance with law, it shall be the duty of the treasurer, or other collector of taxes of the county or corporation in which the land lies, to sell the same, at public auction, for cash, having first given reasonable notice of the time and place of sale; and the proceeds of sale shall be applied, first, to the payment of all taxes then due the State, and all levies then due the county or corporation, with interest, penalty and costs; second, to the payment of all sums paid by any person who purchased at the former tax sale, with interest and the additional sum of five dollars; third, to the payment of a commission to the officer making the sale of five per centum on the first three hundred dollars and two per centum on the residue of the proceeds; fourth, to the satisfaction of any liens other than said taxes and levies registered against said land in the order of their priorities; fifth, and the surplus, if any, to the person in whose name the land was previously sold for taxes subject to redemption as provided by section forty-two his heirs, personal representatives, or assigns. A memorial of the sale under this section shall be duly registered, and a new certificate shall be entered and a duplicate issued in favor of the purchaser, in whom title shall be thereby vested as registered owner in accordance with the provisions of this act. Nothing in this section shall be so construed as to affect, or divest, the title of a tenant in reversion or remainder to any real estate which has been returned delinquent and sold on account of the default of the tenant for life in paying the taxes or levies assessed thereon.

44. *Proceedings upon proof of loss or destruction of duplicate certificate.*—Whenever a duplicate certificate of title is lost or destroyed, the owner,

or his personal representative may petition the court for the issuance of a new duplicate. Notice of such petition shall be published once a week for four successive weeks, under the direction of the court, in some convenient newspaper, and upon satisfactory proof having been exhibited before it that said duplicate certificate has been lost or destroyed, the court may direct the issuance of a new duplicate certificate which shall be appropriately designated and take the place of the original duplicate.

45. *Effect and meaning of a certificate of title.*—Every registered owner of any estate or interest in land brought under this act shall, except in cases of fraud to which he is party, or in which he is a privy without valuable consideration paid in good faith, and except when any registration has been procured through forgery, hold the land free from any and all adverse claims, rights, or encumbrances not noted on the certificate of title, except—

First. Liens, claims, or rights arising or existing under the laws or constitution of the United States which the statutes of this State cannot require to appear of record under registry laws.

Second. Taxes and levies assessed thereon, but not delinquent.

Third. Any lease for a term not exceeding five years under which the land is actually occupied.

46. *Land to remain forever registered.*—The obtaining of a decree of registration and the entry of a certificate of title shall be construed as an agreement running with the land, and the same shall forever remain registered land, subject to the provisions of this act and all amendments thereof.

47. *No rights by adverse possession or prescription.*—No title to nor right nor interest in registered land in derogation of that of the registered owner shall be acquired by prescription or adverse possession.

48. *Registration; its effect and meaning and necessity therefor.*—Except as otherwise specially provided by this act, registered land and ownership therein shall be subject to the same rights, burdens and incidents as unregistered land, and may be dealt with by the owner, and shall be subject to the jurisdiction of the courts in the same manner as if it had not been registered. But registration shall be the only operative act to transfer or affect the title to registered land, and shall date from the time the writing, instrument, or record to be registered is duly filed in the office of the proper assistant recorder. Subject to the provisions of section forty-five no voluntary nor involuntary transaction shall affect the title to registered land until registered in accordance with the provisions of this act.

49. *Conflicting claims between registered owners.*—In case of conflicting claims between registered owners the right, title, or estate derived from or held under the older certificate of title shall prevail.

50. *Assurance fund.*—Upon the original registration of any land under this act there shall be paid to the proper assistant recorder one-tenth of one per centum of the assessed value of such land as an assurance fund,

which shall be subject to the trusts and conditions hereinafter declared for the uses and purposes of this act.

51. *Accounts of assistant recorders; payments into State treasury upon trust.*—All moneys received by the assistant recorders under the preceding section shall be kept in a separate account and be paid into the State treasury upon the special trust and condition that the same shall be set aside by the auditor of public accounts in trust as a separate fund for the uses and purposes of this act, to be known as the "land registration assurance fund," which said fund is hereby appropriated to the uses and purposes set forth in this act.

52. *Funds to be invested in State bonds upon trust.*—Said moneys, in so far as the same may not be required to satisfy any judgment certified against the assurance fund under section fifty-five of this act, shall be invested by the treasurer of the Commonwealth in State bonds in trust for the uses and purposes set forth in this act until said fund amounts to the sum of five hundred thousand dollars; but the income, or so much thereof as may be required therefor, may be applied towards the payment of the expenses of the administration of this act and the satisfaction of any such judgment. Whenever and so long as the face value of the bonds purchased as aforesaid equals said sum of five hundred thousand dollars, other moneys thereafter coming into said fund, together with any income not required for the purposes aforesaid, shall be transferred from the land registration assurance fund to the civil contingent fund.

53. *Suits against the assurance fund.*—Any person who had no actual notice of any registration under this act by which he may be deprived of any estate or interest in land, and who is without remedy hereunder, may within two years next after the time at which the right to bring such action shall have first accrued to him, or to some person through whom he claims, bring an action of assumpsit against the treasurer of the Commonwealth in the circuit court of the county or the proper court of the corporation in which the land, or the greater part thereof, lies for the recovery out of the assurance fund of any damages to which he may be entitled by reason of any such deprivation. The assurance fund shall be defended in such action by the attorney for the Commonwealth of such county or corporation, and by the attorney-general in case of appeal to the supreme court of appeals. The measure of damages in such action shall be the value of the property at the time the right to bring such action first accrued, and any judgment rendered therefor shall be paid as hereinafter provided. If any person entitled to bring such action be under the disability of infancy, insanity, imprisonment, or absence from the Commonwealth in the service of the Commonwealth or of the United States at the time the right to bring such action first accrued, the same may be brought by him or his privies within two years after the removal of such disability.

54. *Defendants to suits against assurance fund.*—If such action be brought to recover for loss or damages arising only through the legal opera-

tion of this act, then the treasurer of the Commonwealth shall be the sole defendant. But if such action be brought to recover for loss or damage arising on account of any registration made or procured through the fraud or wrongful act of any person not exercising a judicial function, then both the treasurer of the Commonwealth and such person or persons shall be made parties defendant.

55. *Judgments against the assurance fund.*—If judgment be rendered for the plaintiff in any such action, execution shall issue against the defendants, if any, other than the treasurer of the Commonwealth. And if such execution be returned unsatisfied in whole or in part, or if there be no such defendants, then the clerk of the court in which the judgment was rendered shall certify to the auditor of public accounts the amount due on account thereof, and the same shall then be paid by said treasurer out of the assurance fund on warrant from said auditor under the special appropriation hereby made of said fund for that purpose. Any person other than the treasurer of the Commonwealth against whom any such judgment may have been rendered shall remain liable therefor, or for so much thereof as may be paid out of the assurance fund, and said treasurer may bring suit at any time to enforce the lien of such judgment against such person or his estate for the recovery of any amount, with interest, paid out of the assurance fund as aforesaid.

56. *When assurance fund not liable.*—The assurance fund shall not, under any circumstances, be liable for any loss, damage, or deprivation occasioned by a breach of trust, whether express, implied, or constructive, on the part of the registered owner of any estate or interest in land.

57. *How judgments to be satisfied out of assurance fund.*—If at any time the assurance fund be insufficient to satisfy any judgment certified against it as aforesaid, the unpaid amount shall bear interest and be paid in its order out of any moneys thereafter coming into said fund.

58. *Fees of recorder and other officers of the court.*—The fees payable under this act shall be as follows:

(a) *To the recorder.*—For docketing and indexing the original petition and exhibits therewith, and publishing and mailing the notice thereof, the actual cost of such publication and postage, and three dollars. For docketing any decree or other paper and forwarding same to assistant recorder, the postage required, and fifty cents.

(b) *To assistant recorders.*—For docketing, indexing and filing any original petition and exhibits therewith, and indexing memorandum thereof in deed-book, as notice of his *lis pendens*, and forwarding same with certificate to the recorder, the postage required, and two dollars. For docketing, indexing and filing any other paper and forwarding same to recorder, the postage required, and fifty cents. For the entry of the original certificate of title and issuing one duplicate certificate and recording and indexing memorandum in proper deed-book, three dollars. For each additional duplicate, fifty cents. For the registration of any writing, instru-

ment or record, or any memorial, including every act necessary therefor, one dollar.

(c) *To examiners of titles.*—For examining title and making report to the court, one-tenth of one per centum of the value of the land, and postage, and ten dollars. For hearing evidence in contested cases and making report to the court, the same fee as that of a commissioner in chancery for like services.

(d) For any service of the recorder or assistant recorders, or of any sheriff or surveyor not specially provided for herein, such fee as may be allowed by law for like services in other cases.

59. *Term of first judge.*—This act shall take effect from its passage, and the term of the first judge elected hereunder shall commence on the first day of February, nineteen hundred and seven.

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### Evils of Present Land Laws.

1. Only evidences of title are recorded. Hence all the evidence must be examined every time, and the difficulty, danger and labor increases with every transfer. This causes increasing delays and costs, besides augmented uncertainties.

2. Much important evidence is not recorded but is altogether *in pais*, particularly evidence concerning the true heirs of decedents. This adds to uncertainties and fills the past with ghosts that not only haunt, but frequently take actual possession of lands transferred to their detriment.

3. There is no proof of the genuineness of signatures to deeds. Forgeries are easy.

4. There is no certainty of identity of parties. The examiner relies wholly upon seeming identity shown by index of deeds. But there may be many "John Smiths."

5. There is no proof of delivery of deed. It may have been executed as an escrow.

6. There is no proof of legal capacity of parties at time deed was delivered.

7. No certainty about marriage or divorce. Rights of dower and curtesy.

8. Lands may be subject to rights by adverse possession or prescription, of which there is absolutely no record.

9. Rights may arise under wills not required to be recorded for seven years.

10. Rights may arise under wills impeached or established within two years after *ex parte* probate; and the statute gives an additional reservation in favor of infants and non-residents.

11. There is no certainty about boundaries under our present system.

12. Pocket deeds may be recorded within ten days and will relate back to date. This reduces every transfer to a matter of "confidence" in the grantor, unless the purchase money is withheld.

13. The loss of title by eminent domain may not appear by ordinary examination.



14. Loss of title by reversal of decree of court may not be shown by the deed books.

15. Conflict of patents and interlocks will not appear by ordinary examination. The chain may be faultless while the original link is worthless.

16. Indexes are imperfect, and fatal mistakes may be made by reason of omissions and other defects.

17. It is not even necessary that deeds should be recorded, or indexed at all. They are binding and serve as "constructive notice" to all the world from the time when lodged for record with the clerk. (99 Va. 460.)

18. "Court titles"—those passing through suits—are the most uncertain of all. Questions of proper parties and procedure must be determined by each examiner.

19. Ceaseless examination of title, entailing delay and expense.

20. Titles dependent upon the *opinion* of each examiner. Doubts may be raised and clouds cast by any tyro. The character of every man's property is therefore subject to destructive or costly "libel" and "slander" by any irresponsible examiner. One may buy on the opinion of an expert and be prevented from selling by the opinion of a novice.

21. The difficulties, dangers and costs of examining titles grow with increasing records.

22. No certainty can be obtained, with rare exceptions; and absolutely none can be maintained. Though all questions of title be judicially settled to-day, others may arise under the present system with every transfer.

23. Real estate is *forfeited* for the non-payment of taxes. This is not done with personalty, and is an arbitrary distinction and discrimination against realty without foundation in justice or necessity. The State should take no more than her just due; she should give good and absolute title to the property she undertakes to sell; the sale should be made on the premises after proper advertisement; and the proceeds should be dealt with as if arising from the enforcement of a deed of trust. Under these circumstances, a sound article being sold, the property would bring its full market value and the surplus proceeds of sale after the satisfaction of taxes and other costs and charges should be paid over to the previous owner. This is equity, and would prevent legalized robbery of the poor and unfortunate—a system to which the State is now a party but from which she derives no peculiar benefit.

### Results of Present System.

*First.* Transactions in real estate are curtailed:

1. By uncertainty of title.
2. By delays in transferring title.
3. By costs of transferring title.

*Second.* Uses of real estate are lessened.

*Third.* Values of real estate are lowered.

*Fourth.* Unnecessary burdens are imposed on real estate.

*Fifth.* The large body of the people—the small owners—are the chief sufferers.